No. 00-874

(3)

Supreme Court, U.S.
FILED
JAN 11 2000
CLERK

In the Supreme Court of the United States

MICHAEL S. MATTHEWS,

Petitioner,

v.

HOWARD COUNTY, MARYLAND; CHARLES ECKER; BARBARA KRANKOWSKI; RAQUEL SANUDO; JAMES N. ROBEY; WAYNE LIVESAY; JIMMIE LYNN SAYLOR; AND GWEN K. WEST,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Barbara M. Cook
County Solicitor

Louis P. Ruzzi*
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OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Howard County, Maryland, Charles I. Ecker, Barbara Krankowski, Raquel Sanudo, James N. Robey, Wayne Livesay, Jimmie Lynn Saylor and Gwen K. West object to the Motion for Leave to File Brief *Amici Curiae* filed by The Center for Equal Opportunity and the Independent Women's Forum.[1]

I. Summary of the Movants' Position

The Movants have requested leave to file an *Amici Curiae* brief and, in supporting the Motion, assert that the District Court and the Fourth Circuit have misstated the law applicable to lawsuits brought under Title VII. The Movants also assert that the unpublished decisions of both courts depart from prior judicial holdings, and that the unpublished decisions may "cast" or create confusion on an important federal question. More particularly, as to both of these contentions, it is the Movants' position that the District Court and Fourth Circuit improperly held that the "mixed motive" or "same result" defense that is available to employers under 42 U.S.C. §1983, is also available as an absolute defense to a Title VII employment discrimination claim.

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[1]For both clarity and brevity, in this objection the following designations will be used: **"Petitioner"** in referring to Michael S. Matthews; **"Petition"** in referring to the Petition for Writ of Certiorari; **"Movants"** in referring to The Center for Equal Opportunity and the Independent Women's Forum; **"Motion"** in referring to the Motion for Leave to File Brief *Amici Curiae* and Brief for *Amici Curiae*; **"District Court"** in referring to the United States District Court for the District of Maryland; **"Fourth Circuit"** in referring to the United States Court of Appeals for the Fourth Circuit; and **"Title VII"** in referring to 42 U.S.C. §§2000e *et seq.* In addition, the Petitioner seeks no review of the lower courts' determinations that all claims against the individuals named as defendants failed to assert claims for cognizable relief, and were time-barred. Thus, as only the Petitioner's Title VII claim against the County is before the Court, the word **"County"** shall be used in setting forth the reasons for the Respondents' objection.

II. The County's Reasons for Withholding Consent

Believing it was manifest that the Fourth Circuit's decision, and the District Court's decision upon which it was based, neither conflicted with decisions of this Court or other courts of appeal, nor presented an important question of federal law which should be settled by this Court, the County advised this Court on December 20, 2000 that it did not intend to respond to the Petition unless a response was requested by the Court.[2] As the Movants make or repeat statements made by the Petitioner which improperly reflect the facts adduced, as well as the arguments made and decisions rendered in the proceedings below, the Motion is of no help or assistance to the Court.[3]

Contrary to the representations made by the Petitioner and Movants in this Court, the County did not concede, and the District Court did not find, that the County committed unlawful

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[2]The County executed and submitted a "WAIVER" to the Court on December 20, 2000. Movants first contacted the County on December 26, 2000. The County advised Movants on December 27, 2000 that they would withhold their consent for the reasons stated here.

[3]The District Court's Opinion contains an accurate and thorough summary of the undisputed facts and proceedings before the District Court. The Petition and Motion, oppositely, omit important facts and contain unsupported allegations and misstatements of fact. While it is unnecessary to identify each here, the Movants' allegation at page 2 that the "County refused to settle Officer Matthews' individual claim" typifies the manner in which the Movants, who were not parties to the action, have carelessly treated the record. Far from "refusing" to settle with the Petitioner, the record below reveals that the County energetically pursued settlement in good faith, and was advised by the Equal Employment Opportunity Commission ("**EEOC**") that it had offered more in settlement than the EEOC could seek on Petitioner's behalf under the circumstances presented (Resp. App. Ex. A). It was the Petitioner's unreasonable position during conciliation, moreover, that caused the EEOC to invite the County to engage in conciliation with the EEOC alone, an effort which entirely resolved all issues of class relief (Pet. 10a).

discrimination.[4] The County also did not raise, and thus the District Court and Fourth Circuit did not address, a "mixed motive" or "same result" defense of the type raised by the employer in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). Instead, it was the County's contention below that, even assuming the County had committed an unlawful employment practice, the Petitioner asserted no claim of employment discrimination that would entitle him to the relief he requested in his complaint. It was also the County's contention below, and it remains the County's contention here, that the Petitioner instituted a broad based, class action lawsuit solely to coerce a favorable settlement with attorneys' fees.

In making their submissions to the Court, neither the Petitioner nor the Movants identify the specific contentions that were made by the County in the District Court. The Petitioner and the Movants do not, moreover, disclose that the Petitioner initiated this action by filing a ten count class action complaint (Pet. 8a) (Resp. App. Ex. B).[5] Finally, neither the Petitioner nor the Movants disclose that in alleging a violation of Title VII in both his original and amended complaint, the Petitioner requested **only** that he be awarded, "back pay in an amount no less than approximately $80,000, to include all benefits, raises, and overtime attributable to the intervening time period that would have been afforded to Michael Matthews but for the said discrimination;" (Resp. App. Ex. B).

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[4]At page ii of the Motion, the Movants suggest that the present case involves a factual scenario where an employer "concedes that unlawful discrimination was a motive in an adverse employment decision." The Movants no doubt framed this issue because the Petitioner improperly or mistakenly stated, at page 2 of the Petition, that the County "concedes" it used a discriminatory hiring process in 1995.

[5]The redlined version of the Petitioner's Amended Complaint, showing the additions to and deletions from his original Complaint, is included in the County's appendix.

The foregoing facts are extremely important. In addition to demonstrating the reasons why the County considered Petitioner's lawsuit a strike suit, these facts demonstrate that the Movants are wrong to suggest, as they do without basis at pages 6-7 of their Motion, that the Petitioner did not seek relief or an award of damages, such as backpay, under Section 706(g) of Title VII, 42 U.S.C. §2000e-5(g). Indeed, when the District Court references the Petitioner's claim for "monetary damages stemming from the fact that he was not hired in the first instance" (Pet. 12a), the District Court is specifically referencing the Petitioner's request for backpay, and not a request for compensatory damages under 42 U.S.C. §1981A(b)(3). It is courts which are given the discretion to fashion equitable remedies under Title VII. The Civil Rights Act of 1991, 42 U.S.C. §1981A(b)(3), which permits the recovery of damages for "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-pecuniary losses, does not include an entitlement to backpay or any type of relief authorized under Section 706(g) of Title VII, 42 U.S.C. §2000e-5(g).

As the Petitioner requested only backpay for the alleged violations of Title VII (Resp. App. B),[6] the County was required to raise, and the District Court to consider, the question of whether the Petitioner was entitled to this relief. This same inquiry required the District Court to determine whether a reasonable factfinder could find that the Petitioner would have been hired but for the conduct alleged to be discriminatory, and whether the Petitioner would therefore be eligible for a

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[6]As the District Court correctly noted, the Petitioner made no claim for compensatory damages under Title VII in his amended complaint, and did not, in any event, allege facts that would meet the standards of proof established by the Fourth Circuit for seeking such damages (Pet. 13a). In addition, neither the Petitioner nor the Movants, as evidenced by footnote 2 on page 6 of their Motion, claim that the District Court abused its discretion in finding that no injunctive or equitable relief was appropriately granted to Petitioner under the facts of this case.

backpay award. In conducting this inquiry, it was appropriate for the District Court to rely on the cases referenced in its decision, including *Pennsylvania State Police v. Penn. Human Relations,* 517 A.2d 1253 (Pa. 1986) and *Alexander v. Estepp,* 95 F.3d 312 (4th Cir. 1996), *cert. denied,* 520 U.S. 1165 (1997), as each was relevant to and supported the District Court's decision, in the proper exercise of its discretion, that Petitioner was not entitled to any injunctive or equitable relief, including backpay, under the facts of this case. It also bears repeating, in this regard, that the Petitioner raised numerous constitutional challenges in the District Court which mirrored his Title VII claim. In rendering their decisions that these claims too set forth no cognizable claim for relief, it was entirely appropriate for the District Court and Fourth Circuit to rely upon and reference *Alexander*.

The Movants and Petitioner, in short, mistakenly characterize the District Court's painstaking analysis of the reasons why Petitioner was entitled to no relief under the various claims he filed, as an application of the burden-shifting, mixed-motive analysis of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).[7] The *Price Waterhouse* mixed-motive analysis, however, did not come into play in this case. Its applicability is limited to those cases where both legal and illegal motivations are proven to coexist. Here, both the District Court and Fourth Circuit could readily determine that the Petitioner was entitled to no relief under his complaint, without deciding whether the action taken by the County, in reliance on the affirmative action plan of its police department, violated Title VII (Pet. 9a-11a).

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[7]Under the burden shifting analysis of *Price Waterhouse*, if an employer's articulated reason for an employment decision is found pretextual and discrimination is found to have, in fact, played a role in the employment decision, then the employer may avoid liability "only by proving that it would have made the decision even if it had not allowed [discrimination] to play such a role." *see id.* at 244-245.

Employers, of course, may consider matters of race and gender in constructing an affirmative action program without violating Title VII. *Johnson v. Transportation Agency, Santa Clara County California*, 480 U.S. 616, 640-641 (1987). In the present case, however, both the District Court and the Fourth Circuit properly concluded that a legal test of the validity of the County's plan, in which the Petitioner would bear the burden of proof, *Johnson, id.* at 627, would be an academic exercise.[8] This was so because: 1) the factors of gender and race were not the only factors considered by the County in the hiring process; 2) the County had voluntarily, and by its conciliation agreement with the EEOC, discontinued using the practice about which the Petitioner complained, and fully resolved all issues of class relief;[9] and 3) the Petitioner himself was otherwise entitled to no relief. Again, neither the Petitioner nor the Movants contend here that the District Court abused its discretion in finding that the Petitioner was not entitled to monetary, injunctive, or equitable relief under 42 U.S.C. §2000e-5(g), nor in finding that the Petitioner did not plead or allege facts that would constitute a cognizable claim for compensatory damages under 42 U.S.C. §1983A(b)(3) (Pet. 12a-13a).

Finally, the County briefly addresses the Movants' conjecture, at page 8 of their submission, that *Texas v Lesage*, 528 U.S. 18 (1999) has "apparently" created confusion for federal courts addressing "mixed motive" or "same result" defenses under Title VII. Aside from the fact that

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[8]In explaining that it is not the business of the courts to decide academic issues, the District Court described the Petitioner's action as one ". . . where lawyers, frankly you, (referring to Petitioner's counsel) can benefit from having this big litigation about affirmative action programs and I'm not interested in seeing public moneys spent on that . . ." (Resp. App. Ex. 3).

[9]Employers, like the County, who endeavor in good faith to fully, fairly and finally resolve discrimination complaints during the administrative processing of a charge, would be severely prejudiced if litigants were permitted to seek a judicial order requiring them to do that which they had, in a conciliation agreement with the EEOC, already agreed to do (Pet. 13a).

conjecture alone provides no reason, let alone a compelling reason, for the Court to exercise its discretion in granting a writ of certiorari, the Movants' conjecture is entirely misplaced in this case. This is so because, in addition to the reasons already stated, neither the District Court nor the Fourth Circuit mention *Lesage*. As the lower courts did not mention or rely on *Lesage*, it cannot reasonably be suggested that their unpublished decisions will create confusion for other courts of appeals.

III. Conclusion

As the foregoing demonstrates, even at this late date, the Petitioner and Movants misapprehend the County's arguments below, and the bases for the decisions rendered by the District Court and Fourth Circuit. The decisions of the District Court and the Fourth Circuit are **not** inconsistent with decisions of other United States courts of appeals, nor with decisions of this Court on the same matters. There is, in short, no important question of federal law which has not been, but should be, settled by this Court. Thus, the Movants' motion, as well as the Petition, should be denied.

Respectfully submitted,

HOWARD COUNTY OFFICE OF LAW

Barbara M. Cook
County Solicitor

Louis P. Ruzzi
Senior Assistant County Solicitor
George Howard Building
3430 Courthouse Drive
Ellicott City, Maryland 21043
(410) 313-2104

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2001, three copies of the Objection to Motion for Leave to File Brief Amici Curiae were mailed, postage prepaid, to:

Theodore M. Cooperstein, Esquire
1815 Pennsylvania Avenue, N.W.
Suite 501
Washington, D.C. 20006

R. Alexander Acosta, Esquire
Erik S. Jaffe, Esquire
Erik S. Jaffe, P.C.
5101 34th Street, N.W.
Washington, D.C. 20008

Louis P. Ruzzi
Senior Assistant County Solicitor

RESPONDENTS' APPENDIX

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Ex. B	Petitioner's Redlined Amended Complaint, Showing Additions to and Deletions from Original Complaint	7a
Ex. C	Excerpt from Transcript of Hearing before District Court	32a

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MICHAEL S. MATTHEWS	:	
Plaintiff	:	
v.	:	Civil Action No. JFM 99-2032
HOWARD COUNTY, MARYLAND, et al.	:	
Defendants	:	

REPLY AFFIDAVIT

1. I, Jimmie L. Saylor, am competent to testify.

2. I have previously filed an Affidavit in this proceeding, the contents of which I incorporate here by reference.

3. On behalf of Howard County, Maryland, I attended a conciliation conference which was held in the offices of the United States Equal Employment Opportunity Commission on October 14, 1998. The Plaintiff also appeared at this conference.

4. During the course of this conference, I indicated that the County was willing to offer the Plaintiff an employment position, provided that he completed the final stages of the application process, including a background examination, polygraph examination and psychological and medical screening. In response to this proposal, the Plaintiff stated that he had no interest in working for the County. Additionally, the Plaintiff stated that his interest was money, and demanded the payment of $80,000.00. Later, during the meeting, the Plaintiff demanded $65,000.00, and

threatened that if he were not to receive this amount, he would disclose to the press and to the public that the County discriminates against while males.

5. After conveying the Plaintiff's position to the County's Personnel Officer, I wrote to the Equal Employment Opportunity Commission on October 28, 1998 to confirm the substance of our conversations, to indicate again the reasons why the County could not concede it had violated Title VII, and to explain why the threats made by the Plaintiff could not alter our position.

6. After explaining our position, the EEOC's representative, Chester Kleinman, told me that the County had made a reasonable proposal for conciliation, and that conciliation with the Plaintiff would obviously not be possible. As a result, the EEOC requested, and the County agreed, to consider all other matters arising from the Plaintiff's Charge, including the class remedy included in the Conciliation Agreement (Exhibit 14).

7. A true and correct copy of the correspondence which I forwarded to the EEOC on October 28, 1998, is appended to this Affidavit.

I do solemnly affirm under the penalties of perjury that the contents of the foregoing Reply Affidavit are based upon personal knowledge and are true and correct.

Date: October 8, 1999

Jimmie L. Saylor

Office of Law
Howard County, Maryland

Howard County
MARYLAND

Department of County Administration
OFFICE OF HUMAN RESOURCES

Jimmie Lynn Saylor, Administrator

October 28, 1998

VIA MAIL AND FACSIMILE: (410) 962-3932
Mr. Chester J. Kleinman, Enforcement Manager
United States Equal Employment Opportunity Commission
Baltimore District Office
10 South Howard Street
Baltimore, Maryland 21201

RE: Charge No. 120-96-0063
Matthews v. Howard County, Maryland

Dear Mr. Kleinman:

On behalf of Howard County, Maryland, I write to respond to the matters discussed in the conciliation conference which was held in your offices on October 14, 1998. While I appreciate the efforts which the Commission made to conciliate this matter, Mr. Matthews' unreasonable position and threats make it impossible for the County to accept his demand for settlement. While I indicated in our meeting that the County could agree to many of the conditions which the Commission proposed as an adjunct to the settlement of this matter, some of the relief sought by the Commission continues, in our view, to evidence a misapprehension of the selection process used by the County in 1995.

First, I need say little about Mr. Matthews' reduced demand for $65,000.00, as you yourself advised both the parties at the conciliation conference that Mr. Matthews demanded more than the Commission would seek on his behalf under the circumstances presented. Mr. Matthews' threats that he will disclose to the press and the public at large that the County discriminates against white males offers no incentive for the County to pay this monetary demand. The County has been completely open and forthright about its actions. Stating the matter another way, the County has nothing to hide. In fact, as a public agency, and assuming appropriate legal process, the County understands that any and all of its actions

are subject to public scrutiny. We do not and cannot seek to buy Mr. Matthews' silence.

Reflecting upon the statements that you made at the conciliation conference, we also continue to be greatly confused by the Commission's position.[1] At our meeting, you stated that it was absolutely impermissible for the County to have used race and sex as a plus factor during the appointment process in 1995. While it did not occur to me at the time, your statement seems to indicate that the action you found to be discriminatory was revealed to you by the County in April of 1996. Your statement also seems to suggest that it is the Commission's position that no public employer may have a voluntary affirmative action plan. Indeed, given your statement, and as the Commission did not address the affirmative action plan developed by our Department of Police in either its Determination, or in its response to my August 21, 1998 correspondence, I was at a loss to explain to County officials why you, Ms. Byrd, and Ms. Miller sought information from us concerning the Department's affirmative action goals in the time period between 1996 and 1998.

Finally, in connection with the Commission's position, we still do not understand why the Commission would propose that the County make job offers to all white males receiving two interviews of "excellent", and one of "satisfactory". As I pointed out in my earlier letters and at our meeting, there were only 26 positions to be filled, and there is no dispute that 50 white males received three scores of "excellent" in the interview process. Had we known in 1995 that it would be the Commission's position that we could not have a voluntary affirmative action plan, we would have advanced only those candidates receiving three scores of

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[1]As you know, the County advised you on a number of occasions that it used race and sex as a plus factor in moving candidates with two scores of "excellent" and one of "satisfactory" to the background phase of the hiring process because: (1) the County believed, rightly or wrongly, that it could make such a decision in order to meet the operational needs of an urban police department serving a diverse population; (2) the County wished to address the historic under-representation of women and minorities in the Police Department; and (3) the County simply did not have the resources to conduct background investigations for the roughly 150 people who had received at least two scores of "excellent" and one of "satisfactory" during the oral interviews. Rather than repeating the contents of my earlier letters in their entirety, I incorporate by reference the entirety of my April 16, 1996, January 10, 1997, May 12, 1997 and August 21, 1998 letters.

excellent to the background phase. As a result, none of the persons receiving lesser scores, including Mr. Matthews and the other candidates referenced in the Conciliation Agreement which you have prepared, would have been considered.

In addition, I emphasize again that had Mr. Matthews and other similarly situated white male candidates been moved to the background stage of the process, there is no certainty that they would have successfully completed the background phase or the polygraph examination phase, or that they would have been considered the best candidates after the information received on all candidates at each of these stages was considered and compared. Again, even if the Commission believes that the County improperly failed to move Mr. Matthews and others forward in the process on this single occasion, the fact remains that these persons might not have received offers of employment for other valid and legitimate reasons. While the County was willing to place Mr. Matthews and others similarly situated into the final stages of the selection process in its current and future recruitment processes, we simply cannot offer jobs to people without having them complete the full screening process. As I am certain the Commission can understand, the County would be exposed to significant liability if an offer of employment was made to a candidate who had not successfully passed all phases of our process, including psychological screening, before being placed on the streets to perform the demanding duties of a police officer.

As we are yet without a full understanding of the rationale for your decision, and as you yourself have advised us that Mr. Matthews' demands are not appropriate, we have no alternative but to reject your conciliation proposal. Should you have any additional questions concerning the County's position, please do not hesitate to contact me.

Very truly yours,

Jimmie L. Saylor
Human Resources Administrator

cc: Barbara Veldhuizen, Acting District Director
Raquel Sanudo, Chief Administrative Officer
G. Wayne Livesay, Acting Chief of Police
Barbara M. Cook, County Solicitor

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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OFFICE OF LAW

MICHAEL S. MATTHEWS, in his own Right, and as Representative on behalf of a Class of Plaintiffs Similarly Situated,
400 North Rock Glen Road,
Baltimore, Maryland 21229,
Plaintiff,

V.

HOWARD COUNTY, MARYLAND, a Charter Entity, c/o Howard County Office of Law, 3430 Court House Drive, Ellicott City, Maryland 21043;
CHARLES ECKER, in both his Individual and Official Capacities;
BARBARA KRANKOWSKI, in both her Individual and Official Capacities, Office of Personnel, 3430 Court House Drive, Ellicott City, Maryland 21043;
RAQUEL SANUDO, in both her Individual and Official Capacities, Office of Personnel, 3430 Court House Drive, Ellicott City, Maryland 21043;
JAMES N. ROBEY, in both his Individual and Official Capacities, Howard County Government, 3430 Court House Drive, Ellicott City, Maryland 21043;
WAYNE LIVESAY, in both his Individual and Official Capacities, Howard County Department of Police, 3410 Court House Drive, Ellicott City, Maryland 21043;
JIMMIE LYNN SAYLOR, in both her Individual and Official Capacities, Office of Personnel, 3430 Court House Drive, Ellicott City, Maryland 21043;
and GWEN K. WEST, in both her Individual and Official Capacities, Office of Personnel, 3430 Court House Drive, Ellicott City, Maryland 21043;

Defendants.

Civ.[il Action] No.
JFM 99-2032

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Michael S. Matthews, by his undersigned counsel, in his own right and on behalf of a class (the "Plaintiff Class") of similarly situated plaintiffs (collectively, the "Plaintiffs"), pursuant to Federal Rule of Civil Procedure (Fed. R. Civ. P.) 23, avers for his Complaint in this action, on direct knowledge as to himself, and on information and belief as to all other matters and persons, the following:

Nature of This Action

1. This is action is a civil rights lawsuit against the Howard County government and its officers and officials, in their individual as well as official capacities, for racial and sexual discrimination in violation of federal statutes, and for the violation of Constitutional rights guaranteed by the Fourteenth Amendment of the United States Constitution to Plaintiff Michael Matthews and to a class of similarly situated plaintiffs. This action seeks declaratory and injunctive relief as well as both compensatory and punitive damages for Plaintiff Matthews and all other members of the Plaintiff Class. A formal Determination by the United States Equal Employment Opportunity Commission (the "EEOC") has issued, finding reasonable cause that the Defendants have unlawfully and intentionally discriminated on the basis of race and sex in their hiring and evaluation process for applicants to the Howard County Police Department. In so doing, the Defendants without due process deprive the Plaintiff and others like him of their basic Constitutional rights and civil liberties, as well as stigmatize them for future employment by law enforcement agencies who could question or suspect the basis for the applicants' rejection by Howard County. This calculatedly unfair treatment also violates the Constitutional guarantee of equal protection of the laws in that Plaintiff Matthews and the other members of the Plaintiff Class suffer discrimination and barriers to advancement

solely on the basis of their skin color or sex. As a result, these actions by Howard County and its individual officers violate the Plaintiffs' fundamental rights as American citizens.

Jurisdiction and Venue

2. This Court has jurisdiction under federal question jurisdiction, 28 U.S.C. § 1331; federal civil rights jurisdiction, 28 U.S.C. § 1343; the Declaratory Judgment Act, 28 U.S.C. § 2201; [the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §626(c);] the Civil Rights Acts of 1866 and 1871, 42 U.S.C. § 1981; 42 U.S.C. § 1983; 42 U.S.C. § 1985; 42 U.S.C. § 1986; and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e.

3. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391, in that some or all Defendants reside in this State and that a substantial part of the acts and omissions giving rise to the claims herein occurred in this District.

Parties

4. Plaintiff Michael S. Matthews is (and was at the time he applied for employment) an adult white male over the age of forty years, a citizen of the United States, and resides in the City of Baltimore, Maryland. He was an unsuccessful applicant for the position of Probationary Police Officer with the Howard County Department of Police. As a result of his unlawful denial for employment by the Howard County Police Department, he has been stigmatized from most future employment by other law enforcement agencies.

5. Defendant Howard County, Maryland is a local government charter entity under the laws of the State of Maryland. Howard County is liable, as an employer under Title VII of the Civil Rights Act of 1964 as amended and under the Age Discrimination

in Employment Act (the "ADEA"), and as a person under the Civil Rights Acts of 1866 and 1871, for its policies, practices, and customs established and enforced under the color of state law, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Those policies, practices and customs violate the rights of Plaintiff Michael Matthews and members of the Plaintiff Class under federal laws and the Constitution of the United States.

6. Defendant Charles Ecker was at times relevant to this action the County Executive for Howard County, Maryland. Ecker in his official capacity oversaw, approved and supervised the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Ecker in his individual capacity acted under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

7. Defendant Barbara Krankowski was at times relevant to this action [Chief Personnel Administrator] **an Administrative Services Officer in the Department of Police** for Howard County, Maryland. Krankowski in her official capacity supervised and/or took part in the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint,

denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Krankowski in her individual capacity acted under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

8. Defendant Raquel Sanudo was at times relevant to this action Chief Personnel Administrator for Howard County, Maryland. Sanudo in her official capacity supervised and/or took part in the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Sanudo in her individual capacity acted under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

9. Defendant James Robey was at times relevant to this action the Chief of Police, and is presently the County Executive, of Howard County, Maryland. Robey in his official capacities initially supervised and/or took part in, and now oversees, approves and supervises, the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint,

denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Robey in his individual capacity acted and continues to act under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

10. Defendant Wayne Livesay was at times relevant to this action a senior officer of the Howard County Department of Police, and is presently the Chief of Police for Howard County, Maryland. Livesay in his official capacities supervises and/or takes part in, the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Livesay in his individual capacity acted and continues to act under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

11. Defendant Jimmie Lynn Saylor was at times relevant to this action Administrator, Office of Personnel, Howard County Department of County Administration. Saylor in her official capacity supervised and/or took part in the establishment, implementation, and enforcement of the policies, practices and customs of

Howard County objected to by this Class Action Complaint, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. Saylor in her individual capacity acted under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

12. Defendant Gwen K. West was at times relevant to this action Personnel Analyst in the Office of Personnel, Howard County Department of County Administration. West in her official capacity supervised and/or took part in the establishment, implementation, and enforcement of the policies, practices and customs of Howard County objected to by this Class Action Complaint, denying white male applicants, solely on the basis of their sex or race, a full and fair opportunity to compete for employment with the Howard County Police Department. West in her individual capacity acted under color of state law to conspire with the other Defendants to deprive the Plaintiffs of their Constitutionally protected rights; to actually deprive the Plaintiffs of those Constitutionally protected rights; and to fail to prevent or aid in preventing the conspiracy and deprivation of those Constitutionally protected rights.

Class Action Allegations

13. This action is brought by the named Plaintiff as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, (1) for and on behalf of all white males who applied for, or may subsequently apply for, the position of Probationary Police Officer with the Defendant Howard County, within the time period covered by the charges filed

by Plaintiff Michael Matthews with the EEOC, that he was denied a full and fair opportunity to compete for a probationary position with the Howard County Police Department solely on the basis of his race or sex, as well as for the remainder of the period that these policies, practices and customs have been and continue to be in force; and (2) for and on behalf of all qualified white males in the work force who, because of the Defendants' policies, practices or customs of discrimination, would have applied for such positions during that same period had it not been for their knowledge of the discrimination practiced by the Defendants as set forth below.

14. The proposed Plaintiff Class is so numerous that joinder of all potential individuals as plaintiffs is impracticable.

15. There are questions of law and fact common to the Class, which questions predominate over any questions affecting only individual Class members. The claims of Michael Matthews are typical of the claims of Class members.

16. Plaintiff Michael Matthews can fairly and adequately protect the interests of the Class.

17. Defendants have acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and compensatory relief with respect to all members of the Class.

18. Defendants are and have been engaged in employment practices that emanate from a common plan or scheme uniformly applicable to all white, male applicants for probationary police officer positions, as set forth in detail below.

Facts Common to All Counts of the Complaint

19. On or about July 1995, Michael Matthews applied for employment as a Probationary Police Officer with the Howard County Department of Police.

20. Michael Matthews successfully passed the physical ability test, including a distance drag of a weighted dummy, for the position of Police Officer (Probationary).

21. No female applicants who took the physical ability test on the same day that Michael Matthews tested for physical ability passed that test.

22. The female applicants who failed the physical ability test taken on the same day as Michael Matthews were invited back to retake the test, and those female applicants who retook the test did so using a dummy weighing less than the dummy used to test Matthews and other male applicants.

23. Michael Matthews and other male applicants received no notice from Howard County during the application process that female applicants who had failed the physical ability test were given the opportunity to retake that test.

24. On or about July 20, 1995, Michael Matthews successfully passed the written examination for Probationary Police Officer.

25. Following the written examination, Michael Matthews completed and submitted a Personnel History Questionnaire form.

26. Personnel History Questionnaire forms for Michael Matthews and all other applicants were evaluated and graded on a 20-point scale.

27. Michael Matthews received a score of 10 or greater on his Personnel History Questionnaire.

28. No white male applicants with a Personnel History Questionnaire score less than 10 were advanced to the interview stage of the application process.

29. Applicants who were not white or not male [or under the age of forty] and who received scores of less than 10 were advanced to the interview stage of the application process.

30. Defendants Krankowski, Sanudo, Robey, Livesay, Saylor and West, each and all discriminated against Plaintiff Matthews and the Plaintiff Class on the basis of their sex and/or race in evaluating their Personnel History Questionnaires for advancement in the employment process.

31. A panel of three interviewers interviewed applicants advanced to the interview stage of the application process. Each interviewer rated an applicant as "Excellent," "Acceptable," or "Not Acceptable."

32. The three interviewers on Michael Matthews' panel were Defendant West, Police Officer Norman Snyder and Dennis Matthews.

33. Michael Matthews received final ratings of "Excellent," "Excellent," and "Acceptable" from his three interviewers.

34. White male applicants who received less than three "Excellent" ratings from their interviews advanced no further in the application process and were denied further opportunity to compete for employment.

35. Applicants who were not white or not male [or under the age of forty] and who received only two ratings of "Excellent" were advanced in the application process and permitted to compete for employment.

36. On or about December 18, 1995, Defendant West wrote to Michael Matthews, informing him that although he was qualified, he was not selected to proceed in the hiring process.

37. The denial to Michael Matthews and to the Plaintiff Class of the full and fair opportunity to compete for employment in the Howard County Police Department resulted directly from a policy, practice or custom of illegal discrimination on the basis of race[,] **or** sex[, or age].

38. Each of the individual Defendants knew, acquiesced in, or took part in the policy, practice or custom of Howard County to discriminate against Plaintiff Michael Matthews and other members of the Plaintiff Class.

39. The Defendants established or applied the discriminatory policy, practice or custom of Howard County with deliberate indifference to the Constitutional and federal statutory rights of Michael Matthews and other members of the Plaintiff Class.

40. The discriminatory policy, practice or custom of the Defendants had been ongoing for some years prior to Michael Matthews' application for employment, and **continued**[s to this day] **until entry of a conciliation agreement between Howard County and the EEOC on or about March 9, 1999**.

41. The denial to Plaintiff Michael Matthews and the Plaintiff Class of the full and fair opportunity to compete for employment in the Howard County Police Department, without any legitimate or lawful substantive basis, stigmatized Michael Matthews and members of the Plaintiff Class and permanently harmed their prospects of future employment in law enforcement.

42. Plaintiff Michael Matthews has exhausted his administrative remedies with Howard County.

43. Plaintiff Michael Matthews has filed a complaint of discrimination with the United States Equal Employment Opportunity Commission ("EEOC"), alleging that the

Defendants unlawfully discriminated against him on the basis of his race, his sex, and his age.

44. After investigation, the EEOC determined that the Defendant Howard County admits to having treated minority and female candidates more favorably than white male candidates with regard to selection decisions for Police Officer positions. In its Determination dated June 25, 1998, the EEOC stated there is reasonable cause to believe that Howard County has engaged in a pattern and practice of discrimination against Michael Matthews and white males as a class with respect to making selection decisions for Police Officer positions. EEOC declared that Howard County thereby has violated Title VII of the Civil Rights Act of 1964 by giving impermissible consideration to applicants' race and sex in making Police Officer selection decisions. The EEOC made no finding with respect to charges under the ADEA. A copy of the EEOC Determination is attached to this Class Action Complaint as Exhibit A.

45. On or about April 9, 1999, the EEOC mailed to Plaintiff Michael Matthews a "Notice of Right to Sue" letter. Plaintiff Matthews has accordingly met all procedural prerequisites for filing suit under the Civil Rights Act of 1964, as amended. A copy of the EEOC Notice of Right to Sue letter is attached to this Class Action Complaint as Exhibit B.

COUNT I

(As Against Defendant Howard County)

(Violations of the Civil Rights Act of 1964)

46. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

47. At all times relevant to this action, the right of Plaintiff Michael Matthews and the Plaintiff Class to compete fully and fairly for employment without discrimination on the basis of race or sex was a clearly established right of which the Defendants knew or should have known.

48. In discriminating against Michael Matthews and other members of the Plaintiff Class on the basis of their race or sex, to deny them the full and fair opportunity to compete for employment with the Howard County Police Department, the Defendant [s] **Howard County** violated the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

49. Defendants' conduct was willful, intentional, and conducted with deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class .[, thereby meriting punitive damages.]

COUNT II

[(Violation of the Age Discrimination in Employment Act)]

50. [Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.]

51. [Defendant Howard County is an employer within the meaning of that term as used in 29 U.S.C. § 623.]

52. [In discriminating against Michael Matthews, on the basis of his age, to deny him the full and fair opportunity to compete for employment with the Howard County Police Department, the Defendants violated the Age Discrimination in Employment Act,

29 U.S.C. § 621 et seq., inasmuch as the employment decisions concerning Michael Matthews were based in whole or in part upon his age.]

53. [Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael-Matthews, thereby meriting liquidated damages.]

COUNT II[I]

(Section 1983: Due Process – Sex Discrimination)

54. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

55. All times relevant to this action, the right to due process under the Fourteenth Amendment to the United States Constitution was a clearly established right of which all Defendants knew or should have known

56. In denying Michael Matthews and the Plaintiff Class, on the basis of their sex, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to due process guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1983 of Title 42 of the United States Code.

57. The Defendants' denial of Constitutional due process to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

58. Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

COUNT I[V]II

(Section 1983: Due Process – Racial Discrimination)

59. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

60. All times relevant to this action, the right to due process under the Fourteenth Amendment to the United States Constitution was a clearly established right of which all Defendants knew or should have known

61. In denying Michael Matthews and the Plaintiff Class, on the basis of their race, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to due process guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1983 of Title 42 of the United States Code.

62. The Defendants' denial of Constitutional due process to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

63. Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

COUNT IV

(Section 1983: Equal Protection – Sex Discrimination)

64. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

65. All times relevant to this action, the right to equal protection under the Fourteenth Amendment to the United States Constitution was a clearly established right of which all Defendants knew or should have known.

66. In denying Michael Matthews and the Plaintiff Class, on the basis of their sex, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1983 of Title 42 of the United States Code.

67. The Defendants' denial of Constitutional equal protection to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

68. Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

COUNT V [I]

(Section 1983: Equal Protection—Racial Discrimination)

69. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

70. All times relevant to this action, the right to equal protection under the Fourteenth Amendment to the United States Constitution was a clearly established right of which all Defendants knew or should have known.

71. In denying Michael Matthews and the Plaintiff Class, on the basis of their race, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1983 of Title 42 of the United States Code.

72. The Defendants' denial of Constitutional equal protection to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

73. Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

[COUNT VII]

[(Section 1983: Violation of Federal Statutorily Protected Right)]

74. [Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.]

75. [At all times relevant to this action, the right to be free from age discrimination under the Age Discrimination in Employment Act was a clearly established right of which the Defendants knew or should have known.]

76. [In denying Michael Matthews and the Plaintiff Class, on the basis of their age, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to be free from age discrimination guaranteed by Title 29 of the United States Code.]

77. [The Defendants' denial of the right to be free from age discrimination to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.]

78. [Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.]

COUNT VI [III]

(Section 1981: Racial Discrimination)

79. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

80. All times relevant to this action, the right to freedom of contract absent racial discrimination under the Fourteenth Amendment to the United States Constitution was a clearly established right of which all Defendants knew or should have known.

81. In denying Michael Matthews and the Plaintiff Class, on the basis of their race, the full and fair opportunity to compete for employment in the Howard County Police Department, the Defendants acted under color of state law to deny the right to freedom of contract absent racial discrimination guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1981 of Title 42 of the United States Code.

82. The Defendants' denial of Constitutional freedom of contract absent racial discrimination to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

83. Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

COUNT VII [IX]

(As Against All Individual Defendants)

(Section 1985: Conspiracy)

84. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

85. Each and all of the **individual** Defendants conspired to deprive Michael Matthews and the Plaintiff Class of their Constitutionally protected rights as set forth above.

86. In conspiring to deny Michael Matthews and the Plaintiff Class, on the basis of their race, sex or age, the full and fair opportunity to compete for employment in the Howard County Police Department, the **individual** Defendants acted under color of state law to deny the rights guaranteed by the Fourteenth Amendment of the Constitution of the United States and Section 1985 of Title 42 of the United States Code.

87. The **individual** Defendants' conspiracy to deny those Constitutional rights to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

88. **The individual** Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

COUNT VIII [X]

(As Against All Individual Defendants)

(Section 1986: Negligent Failure to Prevent)

89. Plaintiff repeats and reavers all foregoing paragraphs as though fully set forth herein.

90. Each of the individual Defendants knew or should have known that the wrongs conspired to be done in violation of the constitutional and statutory rights of Michael Matthews and the Plaintiff Class, as set forth above, were about to be committed.

91. Each of the individual Defendants had power to prevent or aid in preventing the commission of the same conspiracy set forth above, yet each Defendant neglected or failed to do so.

92. The **individual** Defendants' negligent failure to prevent conspiracy to deny those Constitutional rights to Michael Matthews and the Plaintiff Class caused him and the other members of the Plaintiff Class compensable injury.

93. **The individual** Defendants' conduct was willful, intentional, and conducted in deliberate indifference or reckless disregard of the rights of Michael Matthews and the Plaintiff Class, thereby meriting punitive damages.

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

A. Certification of the Class of Plaintiffs represented by Michael Matthews in this action for the claims set forth above against the Defendants;

B. Declaratory judgment that the Plaintiff and the Plaintiff Class which he represents have suffered violations of their Constitutional and federal statutory rights against discrimination on the basis of race **and[,]** sex **[**, and age**]** by reason of the actions and policies of the Defendants as detailed above;

C. Injunctive relief, enjoining the Defendant Howard County and the individual Defendants in their official capacities, to cease and desist their policies, practices or customs violating the Plaintiff's and the Plaintiff Class's Constitutional and statutory rights, and barring the continuation or recurrence of the offending policies, practices or customs;

D. On Count I of the **First Amended** Class Action Complaint, entry of Judgment against the Defendant Howard County awarding the Plaintiff Michael Matthews backpay in an amount no less than approximately $80,000, to include all benefits, raises, and overtime attributable to the intervening time period that would have been afforded to Michael Matthews but for the said discrimination; and similarly awarding backpay and all other benefits to the qualifying members of the Plaintiff Class similarly aggrieved by the Defendants' offending policies, practices or customs;

E. **[**On Count II of the **First Amended** Class Action Complaint, entry of Judgment against the Defendant Howard County awarding the Plaintiff Michael Matthews backpay in an amount no less than approximately $80,000, and frontpay, to include all benefits, raises, and overtime attributable to the intervening time

period that would have been afforded to Michael Matthews but for the said age discrimination; and similarly awarding backpay and frontpay to the qualifying members of the Plaintiff Class similarly aggrieved by the Defendants' offending policies, practices or customs;]

F. On Count II [I] of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

G. On Count III of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

H. On Count IV of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

I. On Count V of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars

($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

J. On Count VI of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

K. On Count VII of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all **individual** Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

L. On Count VIII of the **First Amended** Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all **individual** Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;

M. [On Count IX of the Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;]

N. [On Count X of the Class Action Complaint, entry of Judgment on behalf of Michael Matthews and on behalf of each member of the Plaintiff Class against all Defendants, jointly and severally, in the amount of one million dollars ($1,000,000) in compensatory damages and ten million dollars ($10,000,000) in punitive damages;]

O. Award to Plaintiff Michael Matthews of his attorneys fees pursuant to [29 U.S.C. § 216(b);] 42 U.S.C. § 1988; and 42 U.S.C. § 2000e-5(k);

P. Award to Plaintiff Michael Matthews of the costs of this action; and

Q. Such other and further relief as the Court should deem just and proper.

Dated: **September 17** [July 9], 1999

Respectfully submitted,

/s/

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Michael S. Matthews and a
Plaintiff Class of all others Similarly
Situated

what they did was wrong. It could be easy. But I'm not absolutely sure that it is and it seems to me that the focus ought to be here on -- frankly, as I say, I'm not naive. I can see this case -- obviously, there is a political with a small "p" aspect of this case. It's a case where lawyers, frankly you, can benefit from having this big litigation about affirmative action program and I'm not interested in seeing public moneys spent on that if the dispute between the parties can be resolved on the front end because that to me is what the litigation process is all about. And I think the way I want this structured is to find out what your client wants, what he realistically can get, whether or not if you want to brief the issue of -- I think you'll be doing your own dime if you end up losing it -- of broad injunctive relief for class or a class based in the future. I'm not interested in that. This seems to me to be an historic dispute to which your client feels aggrieved. If he's entitled to relief either monetary damage, if there's something else, then he should get it. But there ought to be focused discovery on what it is. The county may want to end up making an offer of judgment or something early on the case. But I'm